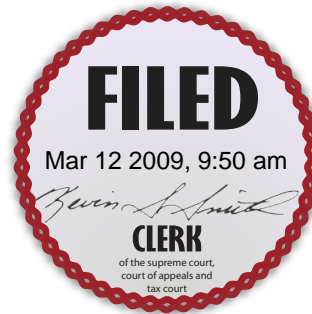


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

WILLIAM SLATER,)	
)	
Appellant-Defendant,)	
)	
vs.)	No. 49A02-0808-CR-744
)	
STATE OF INDIANA,)	
)	
Appellee-Plaintiff.)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Grant W. Hawkins, Judge
Cause No. 49G05-0603-FA-43542

March 12, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

NAJAM, Judge

STATEMENT OF THE CASE

William Slater appeals from the trial court's revocation of his probation. Slater presents a single dispositive issue for our review, namely, whether the State presented sufficient evidence to prove that he violated the terms of his probation.

We reverse.

FACTS AND PROCEDURAL HISTORY

On July 16, 2008, the State filed an Amended Notice of Probation Violation alleging that Slater had failed to participate in sex offender treatment, which was a condition of his probation.¹ In particular, the State alleged that Slater did not attend sessions on July 1 and July 8. Following a contested hearing, the trial court determined that Slater violated the terms of his probation as alleged. The court revoked Slater's probation and ordered that his suspended six-year sentence be served at the Indiana Department of Correction. This appeal ensued.

DISCUSSION AND DECISION

Slater contends that the State presented insufficient evidence to support the revocation of his probation. Specifically, he maintains that under Indiana Code Section 35-38-2-3(f), he cannot be found to have violated the terms of his probation based upon his failure to attend sex offender treatment because his treatment was contingent on his making payments to the treatment center. We must agree.

The decision whether to revoke probation is a matter within the sound discretion of the trial court. Brabandt v. State, 797 N.E.2d 855, 860 (Ind. Ct. App. 2003). A

¹ The State had previously filed a notice of probation violation based upon other allegations, but those were resolved without any finding of a violation and are not at issue in this appeal.

probation revocation hearing is civil in nature, and the State need only prove the alleged violations by a preponderance of the evidence. Id. (citations omitted). “Generally, ‘violation of a single condition of probation is sufficient to revoke probation.’” Id. at 860-61 (quoting Pittman v. State, 749 N.E.2d 557, 559 (Ind. Ct. App. 2001), trans. denied). On review, our court considers only the evidence most favorable to the judgment without reweighing that evidence or judging the credibility of witnesses. Id. at 861 (citations omitted). If there is substantial evidence of probative value to support the trial court’s conclusion that a defendant has violated any terms of probation, we will affirm its decision to revoke probation. Id.

Here, as a condition of his probation, Slater was ordered to undergo, and pay for, sex offender treatment. As of May 28, 2008, Slater had accrued \$843 in debt to the Indianapolis Counseling Center (“the Center”) for his treatment. On that date, after the trial court inquired as to Slater’s ability to pay, the court found “for the purposes of sex offender treatment only” that Slater was indigent. Transcript at 20. Accordingly, Slater could attend sex offender treatment without paying. But the trial court did not address Slater’s responsibility to pay the accrued debt to the Center.

After Slater missed two treatment sessions on July 1 and July 8, the State filed its amended notice of probation violation. On July 23, the trial court held a revocation hearing, and Slater explained that he had missed the two sessions because he did not have any money on those dates.² Christian Carlisle, Slater’s probation officer, explained that after the trial court had declared Slater indigent for purposes of the treatment, he had

² Slater stated that his sole source of income was his wife’s internet bank account, and somebody had stolen their debit card.

“negotiated on Mr. Slater’s behalf a deal where he would pay only \$10 a week towards that past-due balance [with the agency of \$843] and they would charge him nothing more for treatment.” Id. at 28. When asked to explain why he had missed the two sessions of treatment, Slater told the trial court that Carlisle had told him that “if [he] showed up with \$9.99 that [Slater] would be [found to be in violation of the terms of his probation].” Id. at 30-31. In other words, it was Slater’s understanding that he could not attend a session without the \$10 payment for his past-due balance.

Carlisle did not deny that he had told Slater he was required to pay the treatment facility \$10 per week in order to attend sessions. Indeed, Carlisle stated that he had tried to help him “to comply with treatment with minimal to no payments[.]” Id. (emphasis added). Indiana Code Section 35-38-2-3(f) provides: “Probation may not be revoked for failure to comply with conditions of a sentence that imposes financial obligations on the person unless the person recklessly, knowingly, or intentionally fails to pay.” Here, because the trial court had found Carlisle to be indigent with respect to paying for treatment on May 28, and because Slater’s unrefuted testimony was that he could not attend the two missed sessions in July because he could not afford the \$10 payments, Slater cannot be found to have violated the terms of his probation on this basis. The State did not allege or prove that Slater recklessly, knowingly, or intentionally failed to make the \$10 payments for the sessions on July 1 and July 8, so the evidence is insufficient to support the revocation of his probation.

Carlisle also stated that on July 14, Slater had left him a voice mail stating that he would attend the next treatment session, “but that he would not participate.”³ Id. at 28. But the State did not present evidence that Carlisle refused to participate in that session, only that he had threatened not to participate. Indeed, on July 15, Carlisle received a telephone call from Slater’s wife stating that Slater was “medically unable” to attend that day’s session. Id. And the State did not allege a probation violation based upon Slater’s failure to attend the July 15 session in its amended notice of probation violation. See, e.g., Richardson v. State, 890 N.E.2d 766, 768 (Ind. Ct. App. 2008) (holding State barred from asserting probation violation based upon conduct not alleged in notice of probation violation). Again, the evidence is insufficient to support the revocation of Slater’s probation.

Reversed.

BAKER, C.J., and KIRSCH, J., concur.

³ A condition of Slater’s probation was that he attend and participate in sex offender treatment.